Supreme Court, U.S.
FILED
SEP 20 1996
CLERK

No. 96-253

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

CESAR D. JARABE, SR., individually and for the benefit of the Estate of TOMASA ISMA JARABE, his deceased wife,

Petitioner,

vs.

INDUSTRIAL COMMISSION OF ILLINOIS and AMERICAN AIRLINES, INC.,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

REPLY TO RESPONSE TO PETITION FOR WRIT OF CERTIORARI

IVAN M. RITTENBERG
Counsel of Record
RITTENBERG & BUFFEN, LTD.
309 West Washington Street
Room 900
Chicago, Illinois 60606
(312) 332-5400
Attorney for Petitioner

Midwest Law Printing Co., Chicago 60610, (312) 321-0220

4 pp

The constitutional claims before this Court are not now moot. The Petitioner here was not a party to the common law action. He was a beneficiary of that action. American's Response is correct. The Petitioner will not receive any additional funds under the Workers' Compensation Act of Illinois because American Airlines' credit from the common law recovery brought by the Estate of Abundia J. McLeod exceeds American's monetary liability under the Act. However, the cause of action on review before this Court was not limited to a claim for monetary relief. It was a declaratory judgment action seeking injunctive relief beyond monetary relief. The trial court's order declared the statute in question unconstitutional:

> A) Section 820 ILCS 305/7(i) is declared and held as unconstitutional in violation of the due process and equal protection clauses of the United States Constitution . . .

The trial court entered a permanent injunction. This injunction was for the benefit of this Petitioner *and all persons similarly situated*:

> B) The Illinois Industrial Commission is not to enforce Section 7(i).

This injunction had general application. It protected the Petitioner and all persons similarly situated from the continued illegal and unconstitutional enforcement of Section 7(i) by the Illinois Industrial Commission. In this case, *sub judice*, equitable relief was asked for and granted. This general injunctive relief was dissolved by the Illinois Supreme Court's declaration that the statute is constitutional. In this appeal declaratory and general injunctive relief is still the objective. This is still a matter of constitutional declaratory judgment and constitutional injunctive relief. A favorable ruling in the United States

Supreme Court determining the Court below erred in finding Section 7(i) constitutional reinstates the injunction. The payment of money does not satisfy an equitable remedy. The question and controversy regarding the validity of the permanent injunction that was granted and then reversed on appeal is not moot but still ripe for adjudication in the Supreme Court of the United States. The issue affects fundamental constitutional rights. This litigant and all other persons similarly protected by the injunction granted in the trial court have a real interest and controversy with respect to the declaratory judgment and injunctive relief. *Richardson v. Ramirez*, (1974) 418 U.S. 24, 41 L. Ed. 2d 551, 94 S. Ct. 2655.

CONCLUSION

In the pending appeal the Petitioner did seek a declaratory action and general injunction relief for his own benefit and the benefit of others. The case should not fall for mootness. The case should be decided on the merits for Petitioner's benefit as well as the benefit of other litigants. We cite *Daniel Javier, Deceased by Regina Javier, his wife individually and for Darien Javier, a minor v. Robinson Bus Co.*, Illinois Industrial Commission docket 93 WC 67928 as a case that is now pending and adversely impacted upon by the dissolution of the injunction. The litigants there also await the disposition in this Court of the declaratory judgment on appeal in order to seek the aid of the injunction.

For these reasons, and those previously stated, a writ of certiorari should issue to review the judgment of the Supreme Court of Illinois.

Respectfully submitted,

IVAN M. RITTENBERG
Counsel of Record
RITTENBERG & BUFFEN, LTD.
309 West Washington Street
Room 900
Chicago, Illinois 60606
(312) 332-5400
Attorney for Petitioner